

Message Text

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ORIGIN OPIC-06

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EA/IMS:ARDORNHEIM

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R 032258Z APR 75

FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA

UNCLAS STATE 076017

E.O. 11652: N/A

TAGS: EINV

SUBJECT: GOI APPROVALS FOR OPIC INSURANCE - LICENSING

1. OPIC HAS RECEIVED A COPY OF BKPM'S LETTER DATED MARCH 7, 1975 WHICH DECLINES APPROVAL FOR OPIC INSURANCE OF CLUETT-PEABODY'S LICENSING AGREEMENT (OPIC REGISTRATION 497-74-268) ON GROUNDS THAT QUOTE A LICENSE AGREEMENT CANNOT BE CONSIDERED AS A PROJECT OR ACTIVITY WITHIN THE MEANING OF AFORESAID INVESTMENT GUARANTY AGREEMENT UNQUOTE.

2. THE INVESTMENT GUARANTY AGREEMENT REFERS TO "GUARANTEED INVESTMENTS IN PROJECTS OR ACTIVITIES APPROVED BY THE HOST GOVERNMENT." IT IS OPIC'S LONG STANDING PRACTICE TO REGARD AS INVESTMENT THE TRANSFER OF TECHNOLOGY AS WELL AS CERTAIN SERVICE CONTRACTS, IN ACCORDANCE WITH OPIC'S STATUTORY AUTHORITY WHICH DEFINES INVESTMENT TO INCLUDE "ANY CONTRIBUTION OF FUNDS, COMMODITIES, SERVICES, PATENTS, PROCESSES OR TECHNIQUES," IN THE FORM OF LOANS, PURCHASE OF SHARE OWNERSHIP, AND "PARTICIPATION IN ROYALTIES, EARNINGS, OR PROFITS," AND "THE

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FURNISHING OF COMMODITIES OR SERVICES PURSUANT TO A LEASE OR

OTHER CONTRACT." OPIC HAS HERETOFORE INSURED LICENSING AND AND ROYALTY AGREEMENT IN SIGNIFICANT AMOUNTS FOR INDONESIA, BASED UPON GOI APPROVAL OF THE PROJECTS IN CONNECTION WITH WHICH SUCH AGREEMENTS HAVE BEEN UNDERTAKEN.

3. OPIC DOES NOT REGARD THE LICENSING OR ROYALTY AGREEMENT AS THE PROJECT, BUT AS THE INVESTMENT. THE PROJECT IS THE ACTIVITY UNDERTAKEN BY THE FOREIGN ENTERPRISE, TO WHICH LICENSING AGREEMENTS OR OTHER FORMS OF INVESTMENT CONTRIBUTE.

4. OPIC IS STUDYING VARIOUS NEW MODES OF INVESTMENT OVERSEAS, INCLUDING LICENSING AND PRODUCTION-SHARING, WHICH IN MANY CASES MAY BE MORE SUITABLE AND LESS POLITICALLY SENSITIVE THAN DIRECT INVESTMENT THROUGH EQUITY OR DEBT. THESE MODES MAY BE PARTICULARLY APPROPRIATE VEHICLES FOR U.S. SMALL AND MEDIUM-SIZED COMPANIES WITH VALUABLE TECHNOLOGY BUT LIMITED CAPITAL TO FURNISH OVERSEAS.

5. MOST COUNTRIES IN WHICH OPIC PROGRAMS ARE AVAILABLE ARE APPROVING PROJECTS WITH U. S. INVESTMENT CONTRIBUTIONS IN THE FORM OF LICENSING, TECHNICAL ASSISTANCE, ROYALTY AND OTHER CONTRACTUAL AGREEMENTS FOR OPIC INSURANCE. TO THE EXTENT THAT THE GOI DOES NOT DO SO, INVESTORS USING THESE MODES MAY BE DISCOURAGED FROM UNDERTAKING PROJECTS IN INDONESIA. THIS SEEMS ESPECIALLY REGRETTABLE SINCE THESE CONTRACTUAL AGREEMENTS COULD COMPLEMENT THE GOI'S INDICATED DESIRE TO MAXIMIZE INDIGENOUS EQUITY OWNERSHIP.

6. OPIC BELIEVES THAT EMBASSY DISCUSSION OF THE FOREGOING CONSIDERATIONS WITH GOI INVESTMENT AUTHORITIES COULD BE MOST BENEFICIAL AND WOULD APPRECIATE EMBASSY SUGGESTIONS ON HOW BEST TO PROCEED IN ORDER THAT GOI AUTHORITIES CONSTRUCT THE INVESTMENT GUARANTY AGREEMENT TO INCLUDE LICENSING AND OTHER NEW MODES OF INVESTMENT.

7. IF MATTER CANNOT BE RESOLVED BY ACCEPTING BROADER INTERPRETATION OF EXISTING INVESTMENT GUARANTY AGREEMENT, OPIC WILL CONSIDER PROPOSING AMENDMENT TO COVER LICENSING AND OTHER RELATED INSTRUMENTS FOR TRANSFERRING TECHNOLOGY.

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